

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STEVEN AVERY,

Plaintiff,

v.

HAROLD CLARKE, *et al.*,

Defendants.

CASE NO. C05-2002-JLR-MJB

ORDER RE: PLAINTIFF'S NOTICE
OF FORMAL WITHDRAWAL OF
COMPLAINT

Plaintiff is a state prisoner who is currently incarcerated at the Monroe Correctional Complex in Monroe, Washington. Plaintiff initiated this action in November 2005, with the filing of a document entitled "Petition for order to levy a Lien, and or Freeze or Seize all assets, Bank Accounts and holdings held by Debtor." (Dkt. No. 1.) In conjunction with his "petition," petitioner submitted a memorandum in support of his petition, and a notice of motion; and, the "petition" was placed on the motion calendar for consideration on December 16, 2005. (Dkt. Nos. 2 and 3.) The noting date was subsequently stricken as premature because plaintiff had yet to serve his pleadings on defendants. (Dkt. No. 4.)

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1 On January 4, 2006, the court received from plaintiff a proposed civil rights complaint together
2 with an application to proceed with this action *in forma pauperis*. Based upon these filings, this
3 action was construed as a prisoner civil rights action and was referred to the undersigned.

4 After reviewing plaintiff's civil rights complaint, and all of his attached exhibits, this Court
5 concluded that plaintiff had not stated a cognizable claim for relief. Accordingly, on March 1, 2006,
6 this Court issued a Report and Recommendation recommending that this action be dismissed, without
7 prejudice, for failure to state a claim upon which relief may be granted. (Dkt. No. 13.) On the same
8 date, this Court issued an Order granting plaintiff leave to proceed with this action *in forma pauperis*.
9 (Dkt. No. 10.) In that Order, the Court directed the agency having custody of plaintiff to calculate
10 and forward to the Court an initial partial filing fee. (*Id.*) The Court further directed the agency
11 having custody of plaintiff to collect and forward subsequent payments until the entire \$250 filing had
12 been paid. (*Id.*)

13 On March 16, 2006, the court received a letter from plaintiff in which he states that he is
14 formally withdrawing his complaint. (Dkt. No. 14.) He also states, in relation to this Court's Order
15 granting him *in forma pauperis* status, that "I strongly advise you against directing anyone to
16 calculate, collect and forward payment, for they nor you have absolutely no authority nor consent to
17 do so period." (*Id.*)

18 Because defendants have not made an appearance in this action, plaintiff is entitled to withdraw
19 his complaint without any further action by the Court. *See* Rule 41(a)(1), Federal Rules of Civil
20 Procedure. However, the withdrawal of his complaint does not relieve plaintiff of the obligation to
21 pay the filing fee. Pursuant to 28 U.S.C. § 1915(b)(1), a prisoner who brings a civil action "is required
22 to pay the full amount of a filing fee." The statute contains no exception to that requirement for cases
23 which are voluntarily dismissed.

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Moreover, the record makes clear that plaintiff did, in fact, consent to the collection of payments from his inmate account. On page four of his *in forma pauperis* application, plaintiff specifically acknowledges his responsibility to pay the full \$250 filing fee, and authorizes the agency having custody of him to collect that fee. (*See* Dkt. No. 8 at 4.) Plaintiff's objection to the collection of the filing fee for this action is therefore without merit.

Based upon the foregoing, this Court does hereby ORDER as follows:

(1) The Clerk shall terminate this action pursuant to plaintiff's notice of withdrawal of his complaint. (Dkt. No. 14.)

(2) This Court's Report and Recommendation (Dkt. No. 13) recommending dismissal of this action is now moot and should therefore be STRICKEN from the district court's calendar.

(3) The Clerk shall send copies of this Order to plaintiff and to the Honorable James L. Robart.

DATED this 14th day of April, 2006.



MONICA J. BENTON
United States Magistrate Judge